

A BRIEF GUIDE TO THE LAWS REGULATING LOBBYISTS, LOBBYIST ASSOCIATES AND LOBBYIST EMPLOYERS

LOBBYIST DISCLOSURE PROCEDURES (3 M.R.S.A. §§311-326)

1. DEFINITIONS*

COMMUNICATE - The act of expressing, imparting or conveying information or impressions from one person to another, by either oral or written means.

EMPLOYER - A person who agrees to reimburse for expenditures or to compensate a person who in return agrees to provide lobbying services. Employer includes any political action committee as defined in 3 M.R.S.A. §312-A(13) which communicates through or uses the services of a lobbyist to make campaign contributions or to influence in any way the political process.

LEGISLATIVE ACTION - The drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature, by either body of the Legislature, any committee or an official in the Legislative Branch acting in an official capacity. It also includes an action of the Governor in approving or vetoing any legislative document presented to the Governor for approval.

LOBBYING - Communicating directly with any official in the Legislature for the purpose of influencing any legislative action or with the Governor for the purpose of influencing the approval or veto of a legislative action when reimbursement for expenditures or compensation is made for those activities. Lobbying includes the time spent preparing and submitting to the Governor, a Legislator or a legislative committee oral or written proposals for, or testimony or analyses concerning, a legislative action.

LOBBYIST - A person who is employed by another person for the purpose of and who engages in lobbying more than 8 hours in any calendar month, whether the person is employed solely for the purpose of lobbying or the lobbying is incidental to that individual's regular employment. "Lobbyist" does not include a lobbyist associate.

LOBBYIST ASSOCIATE - An individual who:

- A. Is a partner, associate or employee of a lobbyist or is a coemployee of a regular employee of another person if that regular employee is registered as a lobbyist;
- B. Lobbies on behalf of the employer named on the lobbyist registration; and
- C. Spends more than 8 hours in any calendar month lobbying on behalf of an employer of the lobbyist.

OFFICIAL IN THE LEGISLATIVE BRANCH - A member, member-elect, candidate for or officer of the Legislature or an employee of the Legislature.

PERSON - An individual, corporation, proprietorship, joint stock company, business trust, syndicate, association, professional association, labor union, firm, partnership, club or other organization, whether profit or nonprofit, or any municipality or quasi-municipality or group of persons acting in concert. Person does not include this State or any other agency of this State.

YEAR - A 12-month period starting December 1st and ending the following November 30th

* For a complete listing of definitions, see 3 M.R.S.A. §312-A

2. WHAT FORMS MUST BE FILED/WHO MUST FILE

REGISTRATION	Lobbyist and employer file jointly. NOTE: Pursuant to the advice of the Attorney General, the entity employing the lobbyist must register as an employer and not as a lobbyist. State employee or independent agency employee must file <u>IF</u> : 1) the employee is designated by the head of a department or agency to serve as the primary legislative designee for that department; <u>AND</u> 2) the job description of the employee contains lobbying requirements. NOTE: State employees and independent agency employees are exempt from all requirements, other than registration, under the lobbyist disclosure law.
MONTHLY DISCLOSURE REPORT	Lobbyist files.
ANNUAL REPORT	Lobbyist and employer file jointly.
TERMINATION REPORT	Employer files (required only where the lobbyist is no longer engaged by the employer to lobby).
REQUEST FOR NONSESSION WAIVER	Lobbyist files (required only if lobbyist wishes to obtain a waiver of the nonsession filing requirement).

3. WHEN YOU MUST FILE

*JOINT LOBBYIST/EMPLOYER REGISTRATION - must be filed no later than 15 business days after the point at which the lobbyist has lobbied more than 8 hours in a calendar month. NOTE: A registration expires on November 30th of the year in which the lobbyist was registered to lobby unless a termination statement or an annual report is filed prior to that date.

REGISTRATION OF STATE EMPLOYEES OR STATE AGENCY EMPLOYEES - must be filed within 5 days of the convening of a regular legislative session. NOTE: A state or agency employee is subject to the registration requirement only if the employee meets the test set forth in Section 2 of this summary.

MONTHLY DISCLOSURE REPORTS - must be filed no later than 15 calendar days after the conclusion of the month covered by the report. Reports must be filed for each month of the calendar year unless a nonsession waiver is granted or a termination report is filed. A lobbyist must file a report for each employer from whom he/she receives payment for lobbying.

*ANNUAL REPORT - must be filed by December 30 and must cover the period from December 1 of the preceding calendar year through the following November 30. The filing of an annual report before November 30th is considered a notification of termination.

TERMINATION REPORT - must be filed within 30 days of termination of the lobbyist by the employer, if the termination occurs prior to November 30th. A joint registration expires with the submission of such a report; however, the lobbyist and employer must still file an annual report.

NONSESSION WAIVER REQUEST - must be filed with the lobbyist's last monthly report for the legislative session. If the lobbyist resumes lobbying after the request is granted, monthly disclosure reports must be filed for the months in which lobbying was conducted.

PLEASE NOTE: REPORTS MUST BE FILED BY THE DUE DATE. POSTMARKS ARE NOT RELEVANT IN DETERMINING WHETHER A REPORT IS TIMELY FILED.

* These reports must be signed by both the lobbyist and the employer or their designees.

4. WHERE YOU MUST FILE

BY MAIL - All forms must be filed with the Commission on Governmental Ethics and Election Practices, 135 State House Station, Augusta, Maine 04333.

BY FAX - Reports may be provisionally filed by transmission of a facsimile copy, as long as the original of the same report is received by the Commission within 5 calendar days thereafter. The Commission's FAX number is 207-287-6775.

BY HAND - Forms may be hand-delivered to the Commission office between the hours of 8:00 a.m. and 5:00 p.m. on any business day. The office is located at 242 State Street, Augusta, Maine. If you would like a date-stamped receipt, please provide the copy.

5. REGISTRATION FEES

The fee is \$200 for the registration of each lobbyist and \$100 for the registration of each lobbyist associate

There is no registration fee for state or agency employees.

6. LATE PENALTIES

REGISTRATION - A penalty of \$200 may be assessed the lobbyist/employer for every month the lobbyist/employer fails to register as required by 3 M.R.S.A. §313 or 3 M.R.S.A. §313-A.

MONTHLY DISCLOSURE REPORT - The lobbyist may be assessed a penalty of \$100 for every month the lobbyist is delinquent in filing a required report.

ANNUAL REPORT - A penalty of \$200 may be assessed for every month the lobbyist/employer is delinquent in filing the report.

CIVIL SANCTION - Any person who fails to file a required report or pay a required fee or penalty may be suspended by the Commission from further lobbying until such failure is corrected.

NOTE: THE COMMISSION MAY WAIVE A PENALTY IN WHOLE OR IN PART IF IT DETERMINES THE FAILURE TO REGISTER OR REPORT ON TIME WAS DUE TO MITIGATING CIRCUMSTANCES.

7. ENFORCEMENT

Any person may file a complaint with the Commission specifying any alleged violation of 3 M.R.S.A. §311-326. The Commission may request that any named party in the complaint comply with the provisions of the law or may request that the Attorney General investigate the complaint.

The Attorney General may enforce the provisions of the Lobbyist Disclosure Law upon request by the Commission.

8. RESTRICTED ACTIVITIES

No person shall accept employment as a lobbyist on a basis which makes that person's compensation contingent in any manner upon the outcome of any legislative action.

No person shall instigate the introduction or commencement of any legislative action for the purpose of obtaining employment as a lobbyist to oppose or support such legislative action.

LEGISLATIVE ETHICS LAW (1 M.R.S.A. §1015(3))

The law prohibits a lobbyist, lobbyist associate or lobbyist employer from intentionally giving, offering or promising a campaign contribution to any of the following officials during the legislative session and, conversely, it prohibits these officials from intentionally soliciting or accepting contributions during the legislative session: 1) the Governor, 2) a member of the Legislature, 3) any constitutional officer, or 4) the staff or agent of any of these officials.

The prohibition applies to direct and indirect solicitation, acceptance, giving, offering and promising, whether through a political action committee, political committee, political party or otherwise. The law does not apply to solicitations or contributions for bona fide social events hosted for nonpartisan, charitable purposes; special elections to fill a vacancy; and solicitations or contributions made after the deadline for filing as a candidate during an election year.

A person who intentionally violates this provision is subject to a civil penalty not to exceed \$1,000.

BRIBERY AND CORRUPT PRACTICES LAW (17-A M.R.S.A. §602(2)(C) AND 17-A M.R.S.A. §605)

SECTION 602(2)(C)

C. "Pecuniary benefit" means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain; it does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally. "Pecuniary benefit" does not include a meal, if the meal is provided by industry or special interest organizations as part of an informational program presented to a group of public servants; a meal, if the meal is a prayer breakfast or a meal served during a meeting to establish a prayer breakfast; or a subscription to a newspaper, news magazine or other news publication.

SECTION 605

A person is guilty of improper gifts to public servants if:

A. Being a public servant that person solicits, accepts or agrees to accept any pecuniary benefit from a person if the public servant knows or reasonably should know that the purpose of the donor in making the gift is to influence the public servant in the performance of the public servant's official duties or vote, or is intended as a reward for action on the part of the public servant; or

B. That person knowingly gives, offers or promises any pecuniary benefit prohibited by paragraph A.

2. Improper gifts to public servants is a Class E crime.

COMMISSION GUIDANCE REGARDING INTERPRETATION OF DEFINITION OF "LOBBYING" (May 10, 2000)

The current Lobbyist Disclosure Procedures in 3 M.R.S.A. Chapter 15 predicate the status of "lobbyist" and the function of "lobbying" upon the employment relationship between lobbyist and employer and the receipt of compensation in some form (including reimbursement for expenses) for lobbying. The provisions of Section 317 require the reporting of specific amounts of compensation, expenditures, etc., as applicable. Consequently, the forms prescribed by the Commission conform to the statutory requirements and provide for the reporting of amounts of compensation, expenditures, etc. and not for the amounts of time spent engaged in "lobbying" activities.

Based upon those criteria, lobbyist and lobbyist associates should report the amounts of compensation they receive based upon either the hours billed to their employer or, in the case of a salaried or hourly employee, the amount computed by multiplying the hours engaged in lobbying activities times the employee's regular rate of pay based on a 40-hour week. In the former case, if the lobbyist or lobbyist associate bills the lobbyist employer for the time spent "lobbying" (i.e., time spent communicating directly with any official in the Legislature for the purpose of influencing any legislative action, including time spent preparing and submitting oral or written proposals, testimony, or analyses concerning any legislative action), that amount should be reported. In the latter case, if the lobbyist's employer pays the lobbyist or lobbyist associate for the time spent engaged in "lobbying," the amount of that compensation likewise should be reported.

In response to questions regarding what constitutes lobbying in 1) determining whether the 8-hour threshold per calendar month has been reached, thus triggering the registration requirement, or 2) what should be included in a monthly report, the following guidance is offered:

Travel time should be included if the individual travels to Augusta only for the purpose of speaking to a Legislator or attending a committee meeting or hearing and is doing so on the lobbyist employer's time; that is, the employer is being billed and the lobbyist compensated for the time spent to travel to Augusta. The same would be true for the time spent in a meeting, whether waiting to be heard or simply listening. In most instances, someone is being billed and someone else compensated for the time spent just sitting. If other business is conducted in Augusta, then travel time would not be considered lobbying.

- The above would apply as well in the case of an "in-house" lobbyist, i.e., one who is employed within an entity and a portion of salary, for instance, is designated as compensation for lobbying. While an employee is in Augusta attending session, he/she is away from the employee's regular business, but is still being paid by the lobbyist's employer. Therefore, a portion of that employee's salary proportionate to the time engaged in "lobbying" should be reported.

The determination whether an individual is engaged in reportable "lobbying" depends upon whether the lobbyist is being compensated in some manner by an employer, as opposed to being on the lobbyist's personal time. If the employer is being billed for the full time the lobbyist spends in Augusta (or elsewhere engaged in "lobbying"), then the amount of compensation received for that time constitutes reportable lobbying. In order to answer hypothetical questions more specifically, one must determine whether the individual is being compensated or reimbursed for that person's activities and the amount of that compensation or reimbursement.

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PLEASE MAKE ALL CHECKS PAYABLE TO THE TREASURER, STATE OF MAINE.

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While care has been taken to make this guide accurate, it should not be substituted for the applicable provisions of the law. The law is controlling in the event of any conflict with or omission in this guide.